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Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-64

ROBERT E. IANNELLI, ANTHONY CANCILLA, ALBERT CAMMARATA, ALBERT DIULUS, MAURICE ORLANSKY, PHILIP SCOLIERI, WILLIAM C. FUSARO, NICHOLAS GOBOS,
Petitioners,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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APPENDIX

IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

No. 71-62 Criminal

UNITED STATES OF AMERICA

v.

ROBERT ELIA IANNELLI, ET AL

RELEVANT DOCKET ENTRIES

DATE 1971	PROCEEDINGS	DOCUMENT NO.
Mar. 25	A True Bill.	
Mar. 25	Indictment filed.	1
Mar. 25	Motion filed by U.S. Atty. and Order entered directing that indictment be sealed until the defendants are in custody or have given bail. (Weis, J)	2
Mar. 25	Motion filed and Order entered directing bench warrant be issued for deft., Rob. Iannelli, setting bond in the amt. of $5,000.00 Own Recog. (Weis, J)	3
Mar. 25	Motion filed and Order entered directing bench warrant be issued for deft., Lorigo, setting bond in the amt. of $5,000.00 Own Recog. (Weis, J)	4
Mar. 25	Motion filed and Order entered directing bench warrants be issued for remaining defts setting bond in the amt. of $5,000.00 Own Recog. for each deft. (Weis, J)	5
Mar. 25	Bench Warrants issued.	
Apr. 27	Arraignment—all 14 defts plead not guilty before Knox, J. (rep Mimless)	0

Aug. 13—Order ent transf case to Weis, J (Teitelbaum, J) 87

Aug. 17—Order ent extending time for filing pretrial motions by all defts to Sept 16, 1971; unless time for filing pretrial motions is again extended, all pretrial motions shall be filed by 9/16/71 (McCune, J) 89

Sept. 22—Hearing on preliminary conference on discovery held before Weis, J. and concluded. Order to be entered (Memo filed) (rep M Wike) 94

Sept. 24—Order ent directing counsel for Iannelli shall complete review of transcripts & tapes by 10/22/71 and other defts's counsel by 10/29/71. Evidentiary hearing on motions to suppress set for 11/1/71 at 9:30 AM Bill of particulars to be filed by 9/30/71, and if agreement cannot be reached, argument will be heard on 11/1/71. Motions for discovery shall be filed before 10/10/71. Briefs to be filed by 10/20/71 and reply briefs by 10/26/71. No motions shall be filed by any party after 11/12/71 (Weis, J.) 95

Sept. 27—Transcript of pretrial held 9/22/71 before Weis, J (rep M Wike) 96

Nov. 12—Motion to dismiss indictment filed by Albert Cammarata, Frances Cammarata and Albert Diulus. 114

Nov. 16—Evidentiary hearing held before Weis, J. and continues (As to all defts.) 116

Nov. 23—Motion to suppress evidence filed by Albert Diulus 123

Nov. 29—Affidavit of Sol Lindenbaum, Exec. Asst to U.S. Atty Gen. with order thereon directing same be filed (Wis, J) 124

Nov. 29—Affidavit of Henry E. Petersen, Acting Asst Atty Gen, Crim Div with order thereon directing same be filed (Weis, J) 125

Nov. 29—Evidentiary hearing held before Weis, J. and contd to 12/21/71

Nov. 30—Memo filed (rep M Wike) Transcript of proceedings held Nov. 29, 1971 before Weis, J. (ReP; M. Wike) 126

Dec. 6—Supplemental motion to dismiss indictment filed by counsel for counsel for Albert Cammarata, Frances Cammarata and Albert Diulus. 129

Dec. 10—Motion to dismiss filed by Robt. Iannelli and Delores Iannelli 130

Dec. 10—Post-evidentiary hearing motion for supplemental discovery filed by R. Iannelli and D. Iannelli 131

Dec. 10—Motion to dismiss indictment filed by L. Faiella, W. C. Fusaro and P Scolieri 133

Dec. 10—Motion to dismiss ct 1 filed by Thos Ciancutti, and Anthony Cancilla 137

Dec. 10—Notice, motion to suppress physical evidence filed by deft Maurice Orlansky 140

Dec. 10—Notice, motion to dismiss indictment filed by Maurice Orlansky with proposed order 141

Dec. 10—Motion to dismiss ct 1 of the indictment filed by deft Nicholas Gobos with proposed order 142

Dec. 22—Supplemental motion to suppress physical evidence and electronic interceptions filed by deft Nicholas Gobos with proposed order 146

DATE 1972	PROCEEDINGS	DOCUMENT NO.
Jan. 11	Motion for reconsideration of court's decision or in alternative, for an order limiting the scope of deposition to be taken of Sol Lindenbaum with proposed order of court	150
Jan. 27	Transcript filed re evidenciary hearing held 12-21-71 before Weis, J. (Rep. M. Wike)	153
Feb. 9	Deposition of Sol Lindenbaum filed.	154
Mar. 17	Motion to dismiss indictment as to deft Joseph Lorigo (deceased) filed by U.S. Atty with proposed order	164
Mar. 17	Order entered dismiss indictment as to deft Joseph Lorigo (deceased) (Weis, J.)	
Mar. 22	Transcript of pretrial conference held on 3/10/72 before Weis, Jr. filed. (Rep: M. Wike)	165
Apr. 3	Jury sworn as to all defts—Weis, J.—(rep M. Wike) (deft Ciancutti requests permission not to be present throughout trial—CAV)	
Apr. 4	Jury Trial begun before Weis, J. as to all defts (rep M Wike) (except Lorigo—deceased)	
Apr. 4	Affidavit of Anthony Cancilla filed	174
Apr. 4	Affidavit of Anthony Cancilla filed	175
Apr. 4	Oral motion by deft. Cancilla not to be present throughout the entire trial—granted orally by Weis, J.	
Apr. 4	Oral motion on 4/3/72 by deft. Ciancutti not to be present throughout the entire trial-granted orally by Weis, J.	

Apr. 4—Oral motion by counsel for deft. Cancilla not to be present throughout the entire trial—denied orally by Weis, J.

Apr. 5—Jury trial continues.

Apr. 7—Jury trial continues.

Apr. 10—Jury trial continues.

Apr. 11—Jury trial continues. (Oral motions by defts. Cancilla and Scolieri to withdraw a juror—denied orally)

Apr. 12—Jury trial continues.

Apr. 13—Jury trial continues. (Juror #4 dismissed and Alt. #1 became #4)

Apr. 13—Order entered directing that the seal on the tapes is lifted. (Weis, J.) 176

Apr. 14—Jury trial continues.

Apr. 17—Order ent permitting Atty Livingston to divulge contents of intercepted wire communications of voices for comparison (Weis, J.) 177

Apr. 17—Jury trial continues.

Apr. 18—Jury trial continues.

Apr. 19—Jury trial continues.

Apr. 21—Jury trial continues.

Apr. 24—Jury trial continues.

Apr. 24—Transcript of proceedings of in camera hearing 4/14/72 before Weis, J. (rep M. Wike)

Apr. 25—Jury trial continues.

Apr. 25—Hearing on motions to dismiss held before Weis, J.—Memo filed (rep M Wike) Oral motions by defts Ianelli to dismiss cts 1-6—

Granted orally as to Cts 3 & 5 and denied as to cts 4 & 6) (as to Robert Iannelli) (oral motions for judgment of acquittal by all defts.—Granted orally as to defts Frances Camaratta and Steve Bruno and taken CAV as to all other defts)

Apr. 26—Hearing on motion for judgment of acquittal held before Weis, J. and concluded. Memo filed (rep M. Wike) (orally granted to defts Louise Faiella and Thomas Ciancutti.)

Apr. 26—Jury trial continues before Weis, J.

Apr. 27—Jury trial continues.

Apr. 28—Jury trial continues and concludes before Weis, J.—Memo filed (rep M. Wike) (Questions of jurors attached to trial memo) (mistrial declared as to Dolores Iannelli)

Apr. 28—Order re: jury accommodations filed (Weis, J)

Apr. 28—Jury return verdict before Weis, J.—Verdict sheet filed: Guilty as to Robert Iannelli, Albert Cammarata, Anthony Cancilia, Albert Diulus, William Fusaro, Nicholas Gobos, Maurice Orlanski, Philip Scolieri, (all defts as to cts 1 and 2 and R. Iannelli as to cts 1, 2, 4, 6)

May 1—Points for charge filed by counsel for deft Iannelli (affirmed & included in charge)

May 1—Points for charge filed by counsel for Orlanski

May 1—Gov't requests to charge filed

May 1—Requested point for charge filed by counsel for A. Cammarata and A. Diulus (denied, exception noted)

May 5—Motion for new trial and judgment of acquittal filed by deft Wm. C. Fusaro with proposed order

May 5—Motion for new trial filed by deft Robert E. Iannelli

May 5—Motion for judgment of acquittal after verdict filed by Robert E. Iannelli

May 5—Motion for new trial filed by deft Philip Scolieri 191

May 5—Motion for judgment of acquittal filed by deft Philip Scolieri 192

May 5—Motion in arrest of judgment filed by deft Philip Scolieri 193

May 5—Motion for new trial filed by deft Maurice Orlansky with proposed order 194

May 5—Motion for judgment of acquittal or for new trial filed by deft Nicholas Gobos 195

May 5—Order ent granting extension of time to May 12 for filing post trial motions (Weis, J) 196

May 8—Motion for judgment of acquittal or new trial filed by Albert Cammarata, Albert Diulus and Anthony Cancilla. 197

June 15—Notice of sentencing for all defts. for 6/28/72 at 9:30 a.m. filed. 198

June 19—Notice of rescheduling sentencing for 6/26/72 at 9:30 filed. 199

June 23—Motion for speedy trial filed by Dolores Iannelli 200

June 23—Hearing on motion for speedy trial held before Weis, J.—Memo filed. (rep M. Wike) (motion denied. Case to be tried in Sept. and pretried in August) 201

June 26—Sentence Albert Cammarata: Ct 2, Impr 18 mos. and on condition deft be confined in jail type inst for 3 mos. Exec. remainder of sent of impr susp, placed on prob for 3 yrs. Pay fine $10,000 and stand committed until fine is paid. Pay 1/8 costs of prosecution. Ct 1: placed on prob for 5 yrs. Sentences of prob are to run concurrently and are to commence after impr. Deft to comply with rules of prob as stated in open court (Weis, J.) (rep M. Wike) 202

June 26—Sentence Anthony Cancilla: Ct 2: Impr for 18 mos and on condition deft be confined in jail type inst for 3 mos. Exec of remainder of impr is susp and placed on prob for 3 yrs. Pay fine $10,000 and stand committed until fine is paid. Pay 1/8 costs of prosecution. As to Ct 1: placed on prob for 5 yrs. Sentences of prob to run concurr and are to commence after period of impr. Deft to comply with rules of prob as stated in open court (Weis, J) (rep M Wike) 203

June 26—Sentence of Albert Diulus: Ct 2: Impr for 2 yrs and eligible for parole under 18, 4208(a)(2) at such times as Bd of Parole may determine. Pay fine $15,000.00 and stand committed until fine is paid. As to Ct 2: placed on prob for 3 yrs. Pay 1/8 costs. As to ct 1: placed on prob for 5 yrs. Sentences of prob are to run concurr and are to commence after period of impr. Directed to comply with rules of prob as stated in open court. (Weis, J) (rep M Wike) 204

June 26—Sentence William C. Fusaroy: Ct 2: impr for 18 mos and on condition deft be confined in jail type inst for 6 mos, the Exec of remainder

of sent of impr is susp, and deft placed on prob 3 yrs. Pay fine $10,000 and stand committed until fine is paid. Pay 1/8 costs. As to ct 1: placed on prob for 5 yrs. Sentences of prob are to run concurrently and are to commence after period of impr. Directed to comply with rules of prob as stated in open court (Weis, J) (rep M Wike) 205

June 26—Sentence Nicholas Gobos: Ct 2: impr for 18 mos and on condition deft be confined in a jail type inst for 3 mos. Exec remainder of impr is susp, placed on prob for 3 yrs. Pay fine $10,000 and stand committed until fine is paid. Deft to pay 1/8 costs. As to Ct 1: placed on prob for 5 yrs. Sentences of prob to run concurr and are to commence after period of impr. Deft to comply with rules of prob as stated in open court (Weis, J) (rep M. Wike) 206

June 26—Sentence Maurice Orlanski: Ct 2: impr 2 yrs and eligible for parole under 18, 4208(a) (2) at such times as Bd of Parole may determine. Pay fine $15,000 and stand committed until fine is paid. Ct 2: placed on prob for 3 yrs. Pay 1/8 costs. As to Ct 1, deft placed on prob for 5 yrs. Sentences of prob are to run concurrently and are to commence after period of impr. Directed to comply with rules of prob as stated in open court (Weis, J) (rep M Wike) 207

June 26—Sentence Philip Scolieri: Ct 2: Impr for 2 yrs and eligible for parole under 18, 4208(a) (2) at such times as Bd of Parole may determine. Pay fine $15,000 and is to stand committed until fine is paid. As to ct 2: placed on

prob for 3 yrs. Sent of prob are to run concurr and are to commence after impr. Deft to comply with rules of prob as stated in open court (Weis, J) (rep M Wike) 208

June 26—cc of all sentences this date

June 26—Notices mailed (all defts sentenced this date on contd bond pending appeal)

June 26—Sentence Robert Elia Iannelli: Ct 2: Impr 3 yrs, eligible for parole 18, 4208(a)(2) at such time as Bd of Parole may determine. Pay fine $20,000.00 and stand committed until fine is paid. Ct 1: Placed on prob for 5 yrs. Ct 4: Impr 2 yrs. and pay fine $1000.00 and stand committed until fine is paid. Ct 6: Placed on prob 5 yrs and pay fine $1000 and stand committed until fine is pd. Sentence on ct 4 to run concurr with sent on ct 2. Sentence on ct 6 to run concurr with sentence on ct 1. Total fine $22,000.00 and 1/8 costs of prosecution. Deft to comply with rules of prob as stated in open court. All sentences of prob are to run concurrently and are to commence after period of imprisonment. (Weis, J.) (rep M Wike) (deft's bond contd pending appeal) 209

June 26—cc issued

June 26—Notice mailed

June 26—Hearing on motions for new trials and or judgmt of acquittal held before Weis, J Memo filed (rep M Wike) (denied orally) 210

June 27—Affidavit of Thomas Cianeutti waiving rights to be present at trial filed 211

June 30—Praecipe for appearance filed by Edwin J. Martin, Esq. as counsel for Anthony Cancilla. 212

June 30—Notice of Appeal filed by Anthony Cancilla. 213

June 30—Copy of Notice of Appeal mailed U.S. Court of Appeals together with criminal form to accompany criminal appeals & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for pltf. & deft. & Judge Weis.

June 30—Petition filed and order entered granting leave to deft Nicholas Gobos to depart jurisdiction between 7/1/72 and 7/8/72 (Miller, J.) 214

July 3—Notice of Appeal filed by Cammarata 215

July 3—Notice of Appeal filed by deft Diulus 216

July 3—Copy of Notices mailed U.S. Ct of Appeals together with criminal forms to accompany criminal appeals & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for pltf & deft & Judge Weis. 216

July 3—Notice of Appeal filed by deft Orlansky.

July 3—Copy of Notice mailed to U.S. Ct of Appeals together with Criminal form to accompany criminal appeal & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for pltf & deft & Judge Weis.

July 3—Notice of Appeal filed by Deft Scolieri

July 3—Copy of Notice mailed U.S. Ct of Appeals together with criminal forms to accompany criminal appeal & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for pltf & deft & Judge Weis

July 3—Notice of Appeal filed by deft. Wm C. Fusaro

July 3—Copy of Notice mailed U.S. Ct of Appeals together with criminal forms to accompany criminal appeal & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for Gov't & deft & Judge Weis.

July 5—Transcripts of tapes marked 29A thru 46A filed at the direction of Judge Weis. 220

July 5—Notice of Appeal filed by deft Iannelli 221

July 5—Copy of Notice mailed U.S. Ct of Appeals together with criminal forms to accompany criminal appeal & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for pltf & deft & Judge Weis.

July 5—Notice of Appeal filed by deft Gobos 222

July 5—Copy of Notice mailed U.S. Ct of Appeals together with criminal forms to accompany criminal appeal & copy of the docket entries; copy of Notice of Appeal mailed U.S. Atty.; letters to counsel for pltf & deft & Judge Weis.

IN THE UNITED STATES COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

No. 71-62 Criminal

(18 U.S.C., Sections 2, 371, 1302, 1342, 1952 and 1955)

UNITED STATES OF AMERICA

v.

ROBERT ELIA IANNELLI
a/k/a BOBBY I
DELORES IANNELLI
a/k/a DEE
STEVO BRUNO
ALBERT CAMMARATA
FRANCES CAMMARATA
ANTHONY CANCILLA
THOMAS A. CIANCUTTI
a/k/a SONNY
ALBERT DIULUS
a/k/a SOHO
LOUISE FAIELLA
WILLIAM C. FUSARO
a/k/a FUZZY
NICHOLAS GOBOS
JOSEPH LORIGO
a/k/a Jo Jo
MAURICE ORLANSKI
a/k/o Mo
PHILIP SCOLIERI

No. 71-62 Criminal

(18 U.S.C., Sections 2, 371, 1302, 1342, 1952 and 1955)

INDICTMENT

FIRST COUNT

The grand jury charges:

1. That from on or about the 16th day of October, 1970, and continuing thereafter up to and including the

date of this indictment, in the Western District of Pennsylvania, ROBERT ELIA IANNELLI, a/k/a "BOBBY I", DELORES IANNELLI, a/k/a "DEE", STEVE BRUNO, ALBERT CAMMARATA, FRANCES CAMMARATA, ANTHONY CANCILLA, THOMAS A. CIANCUTTI, a/k/a "SONNY", ALBERT DIULUS, a/k/a "SOHO", LOUISE FAIELLA, WILLIAM C. FUSARO, a/k/a "FUZZY", NICHOLAS GOBOS, JOSEPH LORIGO, a/k/a "Jo Jo", MAURICE ORLANSKI, and PHILIP SCOLIERI, defendants herein, and Joseph Iannelli, Louis Ciancutti, Fortunata Cammarata, a/k/a Ann Harkins, Kenneth Ferris, Thomas D'Amiano, a/k/a "Tom D", Arnold Thomas, Mike Huron, Joseph Skundrich, a/k/a "Tooters", William Tyce McCullough, Joanne Pace Haney and Edith Lisanti, co-conspirators but not defendants herein, wilfully and knowingly did combine, conspire, confederate, and agree together and with each other and with drivers other persons whose names are to the grand jury unknown, to commit certain offenses against the United States; that is to say, they conspired and agreed together to mail paraphernalia to be used, and adapted, devised and designed for use in bookmaking in violation of Section 1302, Title 18, United States Code; to use facilities in interstate commerce with the intent to promote, manage, and carry on and facilitate the promotion, management, and carrying on of an unlawful gambling activity, in violation of the laws of the Commonwealth of Pennsylvania, and thereafter to perform acts to promote, manage, carry on, and facilitate the promotion, management, and carrying on of said unlawful activity, in violation of Section 1952, Title 18, United States Code; and to conduct, finance, manage, supervise, direct, and own an illegal gambling business in violation of Section 1955, Title 18, United States Code.

2. It was part of the conspiracy that the aforesaid ROBERT ELIA IANNELLI, a/k/a "BOBBY I", DELORES IANNELLI, a/k/a "DEE", STEVE BRUNO, ALBERT CAMMARATA, FRANCES CAMMARATA, ANTONY CANCILLA, THOMAS A. CIANCUTTI, a/k/a "SONNY", ALBERT DIULUS, a/k/a "SOHO",

LOUISE FAIELLA, WILLIAM C. FUSARO, a/k/a "FUZZY", NICHOLAS GOBBS, JOSEPH LORIGA, a/k/a "Jo Jo", MAURICE ORLANSKI, a/k/a "Mo", and PHILIP SCOLIERI, defendants herein, and Joseph Iannelli, Louis Cianeutti, Fortunata Cammarata, a/k/a Ann Harkins, Kenneth Ferris, D'Amiano, a/k/a "Tom D", Arnold Thomas, Mike Huron, Joseph Skundrich, a/k/a "Tooters", William Tyce McCullough, Joanne Pace Haney and Edith Lisanti, hereinafter sometimes referred to as "the conspirators" did conduct, finance, manage, supervise, direct, own, and facilitate the conduct, financing, management, supervision, direction, and ownership of an unlawful activity, said unlawful activity being an illegal gambling business in violation of the laws of the Commonwealth of Pennsylvania, to wit, Purdon's Pennsylvania Statutes, Title 18, Sections 4601 and 4607; and thereafter the conspirators did perform, and attempt to perform acts facilitating the conduct, financing, management, supervision, direction and ownership of said illegal gambling business; and said illegal gambling business involved five or more persons in its conduct, financing, management, supervision, direction and ownership, had a gross revenue of $2,000.00 or more on one or more single days, and was in substantially continuous operation for a period in excess of thirty days.

3. It was also part of the conspiracy that the defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", hired and employed co-conspirators William Tyce McCullough and Joanne Pace Haney, among others, to work in the aforementioned illegal gambling business on a salary basis and that others of the conspiraors, among others, worked in the illegal gambling business on a commission basis.

4. It was further part of the conspiracy that the defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", and co-conspirator Joanne Pace Haney would mail and cause to be mailed on a weekly basis during the football season copies of "Weekly Football Schedules and News" to per-

sons involved in the aforementioned illegal gambling business for the purpose of facilitating the dissemination of football "line" and point spread information, necessary to the operation of the aforementioned illegal gambling business.

5. It was further part of the conspiracy that defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", and co-conspirator William Tyce McCullough would and did receive and disseminate "line" and point spread information to the conspirators and other persons and would and did accept bets and wagers on sporting events from said conspirators and other persons.

6. It was further part of the conspiracy that the defendants ROBERT ELIA IANNELLI, a/k/a "BOBBY I" and THOMAS A. CIANCUTTI, a/k/a "SONNY" and co-conspirator Louis Ciancutti agreed together that defendant ROBERT ELIA IANNELLI should accept bets and wagers from certain individuals and that defendants ROBERT ELIA IANNELLI and THOMAS A. CIANCUTTI would and did divided and share the proceeds from these individuals.

7. It was further part of the conspiracy that the defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", would obtain information from defendant JOSEPH LORIGO, a/k/a "Jo Jo", concerning the scores of football games, knowing that defendant JOSEPH LORIGO, a/k/a "Jo Jo" would and did obtain this information from Western Union Sports Tickers and that this information was transmitted from outside of the Commonwealth of Pennsylvania; and that defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", would then disseminate the information received from defendant JOSEPH LORIGO to other persons involved in the aforementioned illegal gambling business.

8. It was further part of the conspiracy that co-conspirators Kenneth Ferris and Mike Huron would assist in, arrange for, and facilitate the collection of monies

owed to defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", as a result of the aforementioned illegal gambling business.

9. It was further part of the conspiracy that several of the conspirators would meet periodically among themselves and with other persons for the purpose of exchanging monies due and owing to each other as a result of the aforementioned illegal gambling business.

10. It was further part of the conspiracy that the defendant DELORES IANNELLI, a/k/a "DEE", would supervise, conduct, manage, and direct that part of the aforementioned illegal gambling business dealing with numbers bets.

11. It was further part of the conspiracy that the defendant DELORES IANNELLI, a/k/a "DEE", would and did receive telephonically from certain of the conspirators the "gross, net and balance" figures of other conspirators, which figures were derived by tabulating the total of numbers bets accepted by said conspirators in a given week; and also that defendant DELORES IANNELLI, a/k/a "DEE", would and did accept numbers bets telephonically.

OVERT ACTS

In pursuance of and in order to further the objects, designs, and purposes of the conspiracy, the conspirators and defendants did do and perform, among others, the following overt acts in the Western District of Pennsylvania:

1. On October 21, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", spoke telephonically with coconspirator Edith Lisanti.

2. On October 22, 1970, defendant FRANCES CAMMARATA spoke telephonically with defendant ROBERT ELIA IANNELLI, "BOBBY I".

3. On October 22, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with co-conspirator Arnold Thomas.

4. On October 23, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with co-conspirator William Tyce McCullough.

5. On October 23, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with co-conspirator Kenneth Ferris.

6. On October 24, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with defendant THOMAS A. CIANCUTTI, a/k/a "SONNY".

7. On October 24, 1970, defendant DELORES IANNELLI, a/k/a "DEE", placed a telephone call to and spoke with defendant ALBERT CAMMARATA.

8. On October 24, 1970, defendant DELORES IANNELLI, a/k/a "DEE", placed a telephone call to and spoke with co-conspirator Fortunata Cammarata, a/k/a Ann Harkins.

9. On October 24, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", spoke telephonically with co-conspirator Thomas D'Amiano, a/k/a "Tom D".

10. On October 24, 1970, defendant ROBERT ELIA IANNELLI a/k/a "BOBBY I", spoke telephonically with defendant JOSEPH LORIGO, a/k/a "Jo Jo".

11. On October 24, 1970, defendant ANTHONY CANCILLA placed a telephone call to and spoke with defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I".

12. On October 24, 1970, co-conspirator William Tyce McCullough placed a telephone call to and spoke with defendant STEVE BRUNO.

13. On October 25, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", spoke telephonically with defendant NICHOLAS GOBOS.

14. On October 25, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with co-conspirator Joseph Skundrich, a/k/a "Tooters".

15. On October 26, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with defendant MAURICE ORLANSKI, a/k/a "Mo".

16. On October 26, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with defendant ALBERT DIULUS, a/k/a "SOHO".

17. On October 27, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with defendant WILLIAM C. FUSARO, a/k/a "FUZZY".

18. On October 27, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with co-cospirator Mike Huron.

19. On October 29, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", spoke telephonically with co-conspirator Louis Ciancutti.

20. On October 29, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", spoke telephonically with defendant LOUISE FAIELLA.

21. On October 29, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", spoke telephonically with co-conspirator Joanne Pace Haney.

22. On October 29, 1970, co-conspirator William Tyce McCullough placed a telephone call to and spoke with co-conspirator Joseph Iannelli.

23. On October 30, 1970, defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", placed a telephone call to and spoke with defendant PHILIP SCOLIERI.

In violation of Title 18, United States Code, Section 371.

SECOND COUNT

The grand jury further charges:

That from on or about the 16th day of October, 1970, and continuing thereafter up to and including the date of this indictment, in the Western District of Pennsylvania, ROBERT ELIA IANNELLI, a/k/a "BOBBY I", DELORES IANNELLI, a/k/a "DEE", STEVE BRUNO, AIBERT CAMMARATA, FRANCES CAMMARATA, ANTHONY CANCILLA, THOMAS A. CIANCUTTI, a/k/a "SONNY", ALBERT DIULUS, a/k/a "SOHO", LOUISE FAIELLA, WILLIAM C. FUSARO, a/k/a "FUZZY" NICHOLAS GOBOS, JOSEPH LORIGO, a/k/a "Jo Jo", MAURICE ORLANSKI, and PHILIP SCOLIERI, the defendants herein, did knowingly and wilfully conduct, finance, manage, supervise, direct, and own an illegal gambling business, such business, such business having a gross revenue of $2,000.00 or more on one or more single days, involving five or more persons in its conduct, financing, management, supervision, direction, and ownership, being in substantially continuous operation for a period in excess of thirty days, and being in violation of the laws of the Commonwealth of Pennsylvania, Purdon's Pennsylvania Statutes, Title 18, Sections 4601 and 4607; in violation of Section 1955, Title 18, United States Code.

THIRD COUNT

The grand jury further charges:

That on or about the 24th day of October, 1970, in the Western District of Pennsylvania, the defendants ROBERT ELIA IANNELLI, a/k/a "BOBBY I" and JOSEPH LORIGO, a/k/a "Jo Jo", did use and cause to be used in interstate commerce between the city of Chicago in the state of Illinois and the city of Erie in the Commonwealth of Pennsylvania, the ticker tape facilities of the Western Union Telegraph Company, with intent to promote, manage, and carry on and facilitate the promotion, management, and carrying

on of an unlawful activity, said unlawful activity being a business enterprise involving gambling in violation of the laws of the Commonwealth of Pennsylvania, Purdon's Pennsylvania Statutes, Title 18, Section 4607; and, thereafter, ROBERT ELIA IANNELLI, a/k/a "BOBBY I" and JOSEPH LORIGO, a/k/a "Jo Jo", did perform and cause to be performed acts to promote, manage, carry on, and facilitate the promotion, management, and carrying on of said unlawful activity; in violation of Section 1952, Title 18, United States Code.

FOURTH COUNT

The grand jury further charges:

That on or about the 11th day of March, 1970, in the Western District of Pennsylvania, the defendant ROBERT ELIA IANNELLI, a/k/a "BOBBY I", did knowingly cause to be deposited in the mail paper and writing to be used, and adapted, devised, and designed for use in bookmaking, in that on the above date he did cause to be deposited in the mail an envelope addressed to "Al Diulus, 5472 Pocusset St., Pgh., Pa. 15217," said envelope containing cards entitled "Rules Applicable to Incomplete Games"; in violation of Sections 1302 and 2, Title 18, United States Code.

FIFTH COUNT

The grand jury further charges:

That on or about the 17th day of November, 1970, in the Western District of Pennsylvania, the defendant, ROBERT ELIA IANNELLI, a/k/a "BOBBY I", did knowingly cause to be deposited in the mail paraphernalia to be used, and adapted, devised and designed for use in bookmaking, in that on the above date he did cause to be deposited in the mail an envelope addressed to "Al Diulus, 5472 Pocusset St., Pgh., Pa. 15217", said envelope containing a copy of "Weekly Football Schedules and News"; in violation of Sections 1302 and 2, Title 18, United States Code.

SIXTH COUNT

The grand jury further charges:

That from on or about the 1st day of September, 1967, and continuing thereafter until the 20th day of September, 1969, in the Western District of Pennsylvania, the defendant ROBERT ELIA IANNELLI a/k/a "BOBBY I", and William Tyce McCullough, who is not named as a defendant herein, for the purpose of conducting and carrying on by means of the Post Office Department of the United States an unlawful business, did use and assume false and ficitious names, and names other than their own proper names, in that during the above period they did use and assume the names William Culp and Robert Jarvis, respectively, which names were false and fictitious and which were other than their own proper names, for the purpose of conducting and carrying on unlawful bookmaking activity in violation of the laws of the Commonwealth of Pennsylvania, Purdon's Pennsylvania Statutes, Title 18, Section 4607, by means of the Post Office Department of the United States; in violation of Section 1342, Title 18, United States Code.

A True Bill,
Foreman

RICHARD L. THORNBURGH
United States Attorney

JULES T. BRUNNER
Special Attorney
United States Department of Justice

U.S. DISTRICT COURT, W.D. PA.

PRELIMINARY CHARGE OF THE DISTRICT COURT

19 After making your own judgment, you will give the testimony of each witness such creditibility as you think it deserves.

As you will note from the little schedule which we have given you, all of the defendants are not charge with all of

the counts. I had this schedule prepared for you so that you might have that made a little clearer as the case begins. Obviously it is going to require your close attention when the evidence comes in as to any one of the defendants, to find out which count it may apply to and what that count involves. Now at the bottom of that sheet of paper I have listed the general subject matter of each count. Now I don't want you to think that the caption we have given this really tells you a whole lot about each count. It is simply a shorthand way of calling your attention to some of the different phases that will be involved as we go along.

Now in the first count of the indictment all of the defendants are charged with conspiring to commit an offense or offenses against the United States. I will read to you what the general law pertaining to conspiracy is as contained in the United States Code. It reads as follows:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy, each is guilty of an offense against the United States."

Let me run over it again.

"If two or more persons conspire to commit an offense against the United States and one or more of those persons do an act to effect the object of the conspiracy, then all of those are guilty of conspiracy."

There are four essential elements that must be proved in order to establish the offense of conspiracy. First, the conspiracy described in the indictment must be willfully formed and was existing at or about the time alleged in the indictment. Second, that the accused or accused willfully became a member or members of the conspiracy. Third, that one of the conpirators thereafter knowingly committed at least one of the overt acts charged in the

indictment. Four, that this overt act was knowingly done in furtherance of some object or purpose of the conspiracy.

I know this is a difficult legal concept to charge on. I will repeat it for you at the end of the case. I'm
21 giving it to you now so you might have some idea of what the charges are that are contained in the indictment so listen carefully to them, but don't give up the ship, if you don't understand it all at this point. Do the best you can.

Now one may become a member of a conspiracy without full knowledge of all the details of the conspiracpy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Before you may find that a defendant or any person has become a member of a conspiracy, the evidence must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or some other person who is claimed to have been a member willfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily and intentionally and with specific intent to do something which the law forbids. One who willfully joins in an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

22 In determining whether a conspiracy existed, you should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular defendant was a member of the conspiracy, if any, you should consider only his actions and statements. He cannot be bound by the actions or declarations of other participants until it is established a con-

spiracy existed and he was one of its members. This, I think, will become clear, too, as we go along.

Any statements, therefore, of a conspirator which are not furtherance of a conspiracy, or may be before its existence, or after it was over may be considered as evidence only against the person making them. A person cannot conspire with himself and therefore you must find at least two people involved in the conspiracy before there can be proof of this crime.

Again, you have to listen carefully to the evidence, since there are numerous defendants, and if there is a conspiracy proved, you must be satisfied beyond a reasonable doubt that the evidence establishes the conspiracy as to each defendant that you find guilty or each one participated, if you so find.

23 On the first count of the indictment all the defendants are charged with conspiring to commit offenses against the United States. One of these offenses is alleging together that the defendants conspired to mail paraphernalia to be used and adapted and devised and designed for use in bookmaking, in violation of the United States Code. I will read you just briefly and in part from that part of the United States Code.

"Whoever knowlingly deposits in the mail or sends or delivers by mail any letter, package, postal card or circular containing any lottery, gift enterprise or similar scheme offers prizes dependent in whole or in part on lot or chance or any record, paraphernalia, paper, writing or any other device used or to be used or adapted, or devised for use in bookmaking or wagering pools with respect to a sporting event is guilty of an offense."

Now the first count also charges as part of the conspiracy that the defendants conspired to use facilities and interstate commerce with the intent to promote, manage, carry on and facilitate the promotion, management and

carrying on of an illegal gambling activity in violation of the laws of the Commonwealth of Pennsylvania, and thereafter to perform acts to promote, manage and carry on, et cetera, the carrying on of this unlawful activity.

As used in this particular section of the law, unlawful activity means a business enterprise involving gambling and/or offenses in violation of the laws of the state in which they are committed or the United States.

So these are two statutes.

The first count also charges that the defendants also conspired to violate another law which is designated as Section 1955 of the United States Code. Now this statute provides in part that whoever conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling business is guilty of an offense against the United States. Now, in this connection, in this particular statute illegal gambling business means one which is in violation of the law of the state in which itis conducted, that it involves five or more persons who conduct, finance, manage, supervise, direct or own the business; third, and has been or remains in substantially continuous operation for a period in excess of 30 days, or if it has not been in existence that long, has a gross revenue of $2,000 in any one one single day.

The meaning of gambling includes, but is not limited to, pool selling, bookmaking or numbers.

We still have a little further to go. I told you before that one of the conditions of one of these statutes was that the gambling had to be in violation of the laws of Pennsylvania, since it is alleged that it occurred here.

Now the appropriate section of the Pennsylvania Law provides in part that whoever either publicly or privately erects, sets up, opens, makes or draws any lottery, or is in any way concerned with the managing, conducting or

carrying on the same is guilty of an offense against the Commonwealth of Pennsylvania.

Of course, you know there is an exception that the State is authorized to carry on one lottery authorized by the State Legislature, but only the State is so authorized.

Now in another section the Pennsylvania Law reads that whoever engages in pool selling or bookmaking or occupies any place with books, apparatus or paraphernalia for the purpose of recording or registering bets or wagers or of selling pools, or records or registers bets or wagers, or being the owner or lessee or occupant of any premises, knowingly permits the same to be used or occupied
26 for any of such purposes, or keeps, exhibits or employs therein any device or apparatus for the purpose of recording or registering such bets or wagers, or the selling of such pools, or becomes the custodians or depository for gain, hire or reward of any money, property or thing of value staked, wagered or pledged, or to be wagered or pledged upon any such result, or receives, registers, records, forwards, or purports or pretends to forward, to or for any recourse, any money, thing or consideration of value, bet or wager or money, thing or consideration, offered for the purpose of being bet or wagered upon the speed or endurance of any man or beast, or occupies any place with books, papers, apparatus or paraphernalia, for the purpose of receiving or pretending to receive, or attempting to forward in any manner any money, thing or consideration of value, bet or wagered, or to be bet or wagered, for any other person, or receives or offers to receive any money, thing or consideration of value, bet or to be bet at any race track, or assists or abets in any manner in any of the acts forbidden in this section is guilty of an offense against the Commonwealth of Pennsylvania.

Let's review for a second and see if I can simplify it a little bit.

27 The first count alleges a conspiracy, and as I told you, the conspiracy is a plan to violate certain laws and the laws which are alleged in the complaint to have been violated here involve the first one of mailing in the post office material pertaining to gambling, using interstate facilities for gambling paraphernalia and, third, the operation of a gambling business which I described to you as involving five or more people.

In all the statutes I quoted from, and particularly Pennsylvania, I want to give you some idea of what the law of Pennsylvania considers illegal when it comes to gambling. Now you should be advised at this point, too, that the mere placing of a bet by an individual is not a crime under Pennsylvania Law. Receiving the bet is considered to be a crime under the law, but placing it is not as an individual better.

Now in the second count all the defendants are charged that they did knowingly and willfully conduct a gambling business and in this count, the second count, we are talking about that same statute I reviewed with you a few seconds ago. That is the one which requires five or more people be involved and the way I described to you that it be
28 in business for 30 days or more or have a gross of $2,000 in any one day, and the other factor that it be in violation of the law of the state in which it occurs.

So the first count is a conspiracy to violate this particular law, among others, and the second count is to violate this particular directly.

That is referred to, as you will see down below, conduct, financing, managing, supervising, et cetera.

Now this third count charges that the defendant Robert Iannelli used and caused to be used in interstate commerce between the City of Chicago in the State of Illinois and the city of Erie in Pennsylvania the ticker tape facilities of the Western Union Telegraph Company with intent to pro-

mote, manage and carry on an illegal activtiy, that being a gambling business alleged to be in violation of the law of Pennsylvania. And it sets out thereafter, Mr. Iannelli performed acts designed to promote, manage and carry on and facilitate this unlawful activity.

So count three, you will note, does not apply to all the defendants, but only to Robert Iannelli, and that is the one we have designated in shorthand, using interstate commerce facilities.

29 Now the fourth and fifth counts involve the same statutes, although they charge two separate acts. The fourth count charges Robert Iannelli on March 11, 1970, deposited in the mail paper and writing to be used, adapted, devised and designed for use in bookmaking. That is, on that date he put in an envelope and addressed to Al Diulus, 5472 Pocusset Street, Pittsburgh, Pennsylvania, in which envelope was a card entitled Rules Applicable to Incomplete Games.

In the fifth count it is alleged that Mr. Iannelli put an envelope in the mail on November 17, 1970, addressed to Al Diulus, 5472 Pocusset Street, which contained a copy of the weekly football schedule and news. Now here we are involved in another part of the United States Code. I will refer to that in a bit, too.

It reads, "Whoever—excuse me. I have to find the right one. It reads:—Well, I am not surprised, I can't find that particular section here. I will have to read that to you, perhaps tomorrow. It involves, generally, that placing certain information in the mail which pertains to gambling is aganst the law. I will read that to you tomorrow.

30 I can't very well be unhappy if you can't remember all I read to you, if I cannot get it all collected here, can I.

As part of the fourth count the Government charges also that the defendants aided and abetted, as well as were principals of the criminal conduct of which complaint is made. Now the section of the code that pertains to aiding and abetting reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as principal.

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

It is not essential to the conviction of a person alleged to be an aider and abetter that the principal be tried or, in fact, even be identified.

This section of the United States Code is applicable to all of the counts other than the first one. It is the law that an individual may be indicted for commission of a substantive crime, that is, for example, the one in count two, and nevertheless be convicted by proof showing him to be and aider and abetter.

31 Now the sixth and last count charges that on or about the first day of September, 1967, and continuing until about the 20th day of September, 1969, in the Western District of Pennsylvania, the defendants Robert Iannelli and William Tyce McCullough, who is not named as a defendant in this case, for the purpose of carrying on by means of the post office department an unlawful business, did use and assume false and fictitious names; that is the names William Culp and Robert Jarvis respectfully, for the purpose of carrying on the unlawful bookmaking activity alleged to be in violation of the laws of Pennsylvania.

This brings out one more statute and it is the last one we will talk about today. This statute is known as Section

1342 and it says in part anybody who for the purpose of conducting, promoting or carrying on by means of the Post Office Department of the United States, any unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false or assumed title, name or address or name other than his own proper name, or takes or receives from any post office or authorized depository any mail matter, letter, postal card, package or other mail matter addressed to any such fictitious, false or assumed title, name or address, or name other than his own proper name
32 is guilty of an offense against the United States.

Now notice the beginning of that, "Whoever for the purpose of carrying on or conducting an unlawful business uses or assumes a fictitious name." You have to have that essential element. Someone could mail you a post card with a different name or a nickname or a joking name you have among yourselves, and you accept that card and it would not be a violation of the law, because it is not intended as part of an illegal business. The first part must be there to make the use of a fictitious name a crime.

We have read over a lot of statutes and I am sure you don't remember all of the details of each one of them, but I hope that by starting out this way you would have some idea of what direction we are heading in and what you should be listening to, and particularly be sensitive to as the trial proceeds.

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2467 U.S. DISTRICT COURT, W.D. PA.

FINAL CHARGE OF THE DISTRICT COURT

THE COURT: Good morning, ladies and gentlemen. It is nice to see you all made it. I thought maybe somebody would stay away.

We have now come to that part of the case, ladies and gentlemen, where it is my duty to charge you on the law

which you should apply to this case. I have charged you at the beginning of the case and at various times during the trial itself.

You should take the instructions as I am giving them to you now in connection with and in addition to the previous instructions on the law as I gave them to you, insofar as they are applicable at this time. There are some instructions which I gave you at the beginning of the case with regard to certain matters which are no longer before you, which, of course, you no longer need be concerned with.

As I mentioned to you at the very beginning of this case, you are the modern representatives of an ancient and honorable institution of the law, known as a "Jury of Twelve." The jury system has existed among the English-speaking people for centuries, and the fact that it has survived for so long a time in substantially its original form, is a tribute to the conscientiousness and fidelity of
2468 the jurors who have sat in your places in thousands of courtrooms across this country. I am sure you realize the seriousness of your duty and you will carry out your obligations as well in deliberating, as you have up to this point in your outstanding attentiveness to this evidence.

You must place yourselves in this court of justice as officers of the court, representatives of the people charged with the duty of participating in the administration of justice, dispelling from your minds any passion, any fear, any thought of favor or any other unworthy emotion which might creep into your deliberations, or which might interfere with your calm reflection and prevent the proper exercise of your function as jurors.

We are all here for one purpose and that is to discover the truth, and having discovered it, to apply the law of the land as it has been established, and to administer justice accordingly.

It is your sworn and solemn duty to judge this case fairly and squarely upon the evidence and upon the evidence alone, making the necessary application of the law as the Court gives it to you. It is not your idea of what the law is or should be, but as I give it to you. And in similar fashion, it is not my idea of what I think the law should be, but must govern my instructions to you. I am bound by the law, too. Of course, if I make a mistake in the law,
2469 it is on the record and that mistake may be corrected, but if you don't apply the law as I give it to you, you will have done an injustice, and I am sure you don't wish to do that. The law requires that those who are proved guilty according to set standards, should be speedily punished and those who are innocent should just as speedily be set free.

No matter what your verdict is, it must be unanimous to reflect the vote of everyone of you. Each and every juror must agree to the final conclusion which you will return to us here in open Court. Any verdict which does not reflect the view of each and every juror in its entirety would be improper and would not be acceptable. We have a jury slip prepared and each of you will be required to sign it. This slip, which we will send out, lists the names of every party and is broken down to every count. You will be required to make a finding as to the guilt or innocence as to each party and as to each count.

One of your first duties as jurors will be to select a foreman who will lead your discussions and will announce your verdict when you have reached it. He will conduct your meetings and generally organize your deliberations.

I want you to understand at the beginning of the case that I am absolutely neutral in presenting these instructions to you. While I have the privilege under the law of expressing my own opinions to you, I told you
2470 that I would not and at this time, I will say again, I will not express my opinion to you as to the guilt

or innocence of the parties. I am leaving that decision to you. It is within your province. It is your job. Therefore, I don't want you to take the fact that I talk about any one phase of the case more than another as indicating that I favor one side or the other.

The fact is, as you know, that some ideas take more words than others. If I talk about some evidence and don't talk about others, again, I am not trying to indicate in any fashion whatsoever what you should do or how you should decide the case. I am only going to take a certain amount of time to discuss the law, and while it may be longer than I would like it to be, obviously, I cannot review everything that has happened in the last four weeks.

There are certain fundamental principles which you must apply in arriving at your conclusions based upon the facts in the case. While I am delivering these instructions, I may, of necessity, refer to the facts, I wish to caution you that you are the sole judges of the facts in the case. Therefore, if any statement, remark or argument of any lawyer during the case was not supported by evidence, you should disregard that statement, argument or remark. Similarly, if I made any statement about the facts during the case or if I should make some remark about the facts in my
2471 charge to you which does not agree with your recollection, you take your recollection. You are the sole judges of the facts.

Under our system of justice, every person is presumed to be innocent of a crime until proven guilty, even though he may have been arrested and indicted. It is, therefore, your duty to decide this case and the guilt or innocence of the defendant solely upon the evidence which has been brought before you.

You are not to be influenced in any way by the fact that the defendants have been arrested or indicted. An indictment is only the formal method by which the Government

accuses a defendant and charges him with a crime. It is just a piece of paper setting out what contention the Government has. It is not evidence of any kind against a defendant and does not create any presumption or permit any inference of guilt. The defendants are presumed to be innocent until proven by the evidence in the case to be guilty beyond a reasonable doubt.

It is your responsibility to determine from the evidence the guilt or innocence of the defendants of the offenses charged. It is not your responsibility to determine the penalty involved, if any. That is the Court's problem.

I have said also that it is your responsibility to determine whether or not the credible or believable evidence is sufficient beyond a reasonable doubt to convict.

2472 A reasonable doubt does not mean all possible doubt. It does not mean a fanciful doubt, such as, for instance, a juror might use simply to avoid an unpleasant duty. It means the lack of moral certainty. A reasonable doubt means that the mind of the juror is left in doubt after an honest consideration of all the evidence in the case and does not rest easily upon the certainty of the guilt of the accused. There need not be absolute certainty, but there must be a moral certainty. There must be the absence of such a doubt as would cause a reasonable man to hesitate to act in matters of importance to himself. The test for the conviction of an accused is whether or not the collective minds of twelve jurors rest easily upon the certainty of the guilt of the accused of the offense charged after you have given the entire evidence careful, fair and just consideration.

In order to convict, you must find beyond a reasonable doubt that each and every element of the offense charge has been established. If you do not so find, it is your duty to acquit.

You should analyze all of the evidence and harmonize as much of it as you can. If there are conflicts in the testi-

mony that cannot be resolved by harmonizing them, then you must determine which evidence is factual and that which is not. You will recall the evidence. I have indicated to you that I will not review it in any great
2473 detail, other than to point out a few points where I think you should review the evidence, and I am doing this even in some trepidation, because if I mention one fact, perhaps it will result in overemphasizing that to the detriment to other facts which you might consider just as or more important and I don't want to do that.

Obviously, in a case which has taken several weeks to try, I could not cover in detail the testimony of the various witnesses. So, again, if I attempt to jog your memory with regard to certain phases of the case, don't take this as any indication that I say this evidence is more important than the other, or you should not consider all the evidence you have heard over this period of time.

Generally, I will leave the recollection of the testimony to you. The attorneys for the various parties have summed it up to you very ably with the last day's summation, and most of it, I am sure will have been refreshed by their closing addresses.

Now, you weigh the evidence in quality rather than quantity, although quantitative evidence should not be disregarded, if it comes from the lips of disinterested parties to the outcome of the case. In the final analysis, however, it is the quality that counts, rather than accumulation. This means that the evidence of one witness on a certain point could be so persuasive to you as to its quality, and therefore, its credibility, that it could outweigh the
2474 evidence given by two or more witnesses on the same point that may have told you a slightly contradictory story. Keep in mind that it is credible evidence which should guide you. There is no rule of law which has been devised with which I can tell you how to judge the credibility of witnesses and how not to make a mistake on it.

All I can say to you is that you will exercise your good common sense and your experience in life when you come to judge where credibility lies. It is for you and you only to decide who is and who is not to be believed in a case like this.

You may judge the credibility of a witness by the manner in which he gives his testimony, his demeanor on the stand, the reasonableness or unreasonableness of his testimony, his means of knowledge as to any fact about which he has testified, his interest in the case, his motive or reason for testifying, or any circumstances that might tend to shed light on the truth or falsity of his testimony.

You are at liberty in the exercise of honest judgment to believe or disbelieve the testimony of any witness in whole or in part, taking into consideration, of course, all the facts and circumstances of the case.

Any evidence which I have ordered to be stricken and/or exhibits that I have refused to admit into evidence cannot be the basis for any decision by you. You must exclude that from your minds.

2475 Your verdict must be based on the evidence that has been brought before you and the testimony before you in the courtroom.

The law does not compel a defendant in a criminal case to take the witness stand and testify and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify. As stated before, the law never imposes upon the defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The burden is upon the Government.

You have heard testimony by two witnesses who were granted immunity from prosecution by the Government. This means that these two witnesses cannot be prosecuted about the matters they testified to. You must keep in mind

when considering the credibility of these witnesses that there has been a lasting relationship with some of the defendants and the fact that they have been granted immunity by the Government. Weigh all these factors when you come to consider the credibility of these witnesses. In this case, also, certain evidence has been presented to you by an expert witness.

Ordinarily, it is for you to determine the facts and form your own opinions and conclusions from them without being influenced by the opinions and conclusions of others. Where a question is one which requires some specialized knowledge not ordinarily possessed by jurors or
2476 judges, we are permitted to consider the opinion of persons who are experts in their fields. You may consider and weigh the opinions of the experts which are expressed to you in connection with the gambling activities in this case, or with the technical devices used in the case.

You should understand that an opinion creates no fact. It is what someone thinks about something and the thought may be precisely accurate or totally inaccurate, and yet represents the honest conviction of the person who expresses it.

Because of this, generally, opinion evidence is considered of a lesser grade than factual testimony and is generally not entitled to as much weight as against positive testimony of actual facts. There is a great difference between factual and opinion testimony. In the one, the witness testifies to the facts and certifies that what he says is true. In the other, he only testifies as to his integrity of belief. He says he believes his opinion to be correct, and he does not pretend that he cannot be mistaken.

Again, the credibility of an expert witness is for you, as with all other witnesses.

You may reject in whole the opinion of any witness you disbelieve and that is whether his opinion is contradicted

or not; to the contrary, you may accept all his opinion, if you so choose.

2477 As I mentioned to you at the beginning of the case, separate crimes are charged in various counts of the indictment and all the defendants are not charged with all of the counts. May I emphasize, again, that each defendant is entitled to have his guilt or innocence determined as to each of the crimes charged against him from the evidence which applies to him, as if he were being tried alone. These cases are being tried together mainly because of convenience to the Government and in the interests of the economy of the time spent in court.

Obviously, it would take longer to try each separate defendant than it would to try them as a group. However, convenience to the Government and the Court does not mean that any of the defendants is to be denied his right of being required to defend only against the evidence which is applicable to him and not that which is only applicable to someone else.

If you find, therefore, that a defendant is guilty beyond a reasonable doubt of any of the crimes charged against him in the indictment, a verdict of guilty should be returned as to him only as to those counts in the indictment which have been proved against him. The guilty or innocence of any other defendant of any of the other crimes charged should not influence your verdict with respect to a particular defendant. You may find any one or more of the defendants guilty or not guilty of the counts with which he is charged.

2478 In reviewing the various counts of the indictment, I have decided to review them in reverse order, starting with the last one and working up to the first. I hope in this fashion that the distinction between the various counts will be more easily understood and in doing it in that fashion, too, I think it puts the focus on what evidence

is admissible as to the various counts in a clearer light, so that you can understand the problems that we have with the different kinds of evidence about which we have talked a number of times during the trial.

I am not suggesting that you have to, but you might find it more logical and convenient for you, also, in your deliberations on the various counts, to start with the last one and work forward. That is, to do No. 6, first, and gradually come back until you get to No. 1. Again, I will leave that matter to you and to your foreman, but as I review the counts, perhaps you can see the reason why I am doing it in that fashion.

The fourth and sixth counts involve only the defendant, Robert Ianelli. Therefore, on any of these particular counts, only Mr. Ianelli is being charged with having committed the specific crimes set out. I do want to caution you, however, that some of the statutes that I refer to in discussing these counts will be called to your attention later in connection with the other counts.

2479 Now, the sixth count charges Mr. Ianelli and William Tice McCullough with having assumed the fictitious names of William Culp and Robert Jarvis in the period from September 1, 1967, and continuing through September 20, 1969, for the purpose of conducting and carrying on an unlawful bookmaking activity, in violation of the laws of Pennsylvania, by using facilities of the Post Office Department and in the violation of the laws of the United States, particularly Sections 1342 of Title 18, United States Code.

Now, with respect to this particular count, I call your attention to the testimony of Mr. McCullough with respect to the rental of an apartment off McKnight Road, by himself and Mr. Ianelli in the names of William Culp and Robert Jarvis. You will recall his testimony about the purpose of renting the apartment, how the phones were

billed, and the testimony of the credit manager from the Bell Telephone Company, Mr. Robert Ellis, who described the methods of billing and introduced copies of the bills mailed during the April to July period of 1969.

Mr. Ellis' testimony also was to the effect that records show the installation date of the phones at that apartment was in July, 1967.

You will recall that I told you this conduct is claimed by the Government to be in violation of the laws of Pennsylvania and certain statutes pertaining to the Post
2480 Office Department. I will read them to you at this time.

The first one is the Pennsylvania Statute, Section 4607, of the appropriate title, in essence, as it applies to this case—and I have deleted some of the wording of the statute that won't apply to this particular case—

"Whoever engages in bookmaking or occupies any place with books, apparatus, or paraphernalia for the purpose of recording or registering bets or records or registers bets or wagers, or being the lessee or occupant of any premises, knowingly permits the same to be used or occupied for any of such purposes or keeps or employs therein any device or apparatus for the purpose of recording such bets or wagers, or becomes a custodian or depository for gain, hire or reward of any money, property or thing of value wagered or to be wagered, or occupies any place with books, papers, apparatus or paraphernalia for the purpose of receiving or for recording or for forwarding or attempting to forward in any manner, any money, thing of value, bet or to be bet or wagered for any person, or assists or abets in any manner in any of the acts forbidden by this statute, is guilty of an offense against the Commonwealth of Pennsylvania."

Now, the Federal Statute which I referred to, Section 1342, of Title 18, provides, in part, that:

"Whoever, for the purpose of conducting, promoting,
or carrying on by means of the Post Office Depart-
2481 ment of the United States, any unlawful business,
uses or assumes, or requests to be addressed by any fictitious, false or assumed name or address or name other than his own proper name, or takes or receives from any Post Office any letter or other mail matter addressed to such fictitious, false or assumed name, or name other than his own proper name, is guilty of an offense."

Now, for purpose of this statute, the use of the mails for the promotion of a bookmaking scheme by the use of an assumed name, is within the meaning of the words, "or any unlawful business."

However, the mere use of a fictitious name or receipt of mail in that name would not be a violation of the law unless it is accompanied by a specific intent on the part of the accused to conduct, promote or carry on any unlawful business. Without that intent, no crime is committed.

In other words, if you told a friend of yours to send you a post card addressed to Joe Blow, or some nickname you had at your home, there would be nothing illegal about him sending it to a fictitious name or you receiving it under a fictitious name. The intent to carry on the unlawful business by this mailing is what is required to make it a crime.

In considering the sixth count, the question is: Does the evidence establish beyond a reasonable doubt that Mr.
Ianelli violated this section of the Federal law per-
2482 taining to the use of the mails by the utilization of
an assumed or fictitious name to carry out an unlawful business with the unlawful intent. Remember, you are dealing only in this case with the violation of the Federal law. If you find that all that Mr. Ianelli did was to violate State law, and that he did not in fact utilize the Post Office Department to get billings from the phone com-

pany, or that he did not use a fictitious name or did not intend to conduct, promote or carry on an unlawful business, then he would not be guilty of that particular charge, the sixth count.

In this count, it is not the violation of the gambling law of Pennsylvania which is charged to be the offense. It is only the violation of the gambling law of Pennsylvania which is claimed that makes the use of the mails unlawful.

Now, the fourth count, again, applies only to Mr. Ianelli. It charges that on March 11, 1970, Mr. Ianelli did knowingly cause to be deposited in the mail, paper and writing to be used and adapted, devised and designed for use in bookmaking, in that he did cause to be deposited in the mail on that date an envelope addressed to Al Diulus at 5472 Pocusset Street, Pittsburgh, Pennsylvania.

This envelope contained cards entitled, "Rules Applicable to Incomplete Games."

It is claimed that this activity of Mr. Ianelli violated Section 1302 and Section 2 of the United States Code.

2483 Section 1302 is rather lengthy and has a great deal of repetition in it. I will read to you only such excerpts that I think will be of assistance to you.

The Statute says that:

"Whoever knowingly deposits in the mail, or sends or delivers by mail, any letter or circular containing any lottery or similar scheme offering prizes dependent in whole or in part upon lot or chance, is guilty of an offense against the United States."

The statute goes on to include by reference to another law the items which are not to be deposited in the mail at any record or paraphernalia, slip, paper, writing or other device used or to be used, or adapted, devised or designed for use in bookmaking, and that any such person who knowingly deposits in the mail or sends or delivers by mail

such material is guilty of violating the laws of the United States.

So, summing up, knowingly depositing in the mail or sending or delivering by mail a paper, writing, or other devices used or to be used or adapted, devised or designed for use in bookmaking is a violation of the Federal law.

There is another statute referred to in this count of the indictment and that is Section 2, called "Aiding and Abetting."

Only the second part of this statute has reference
2484 to this particular count, but I will read it all, because we will be coming back to it later in connection with another count.

Section 2, reads as follows:

A, the first part: "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Part B, the part which is applicable to this count: "Whoever willfully causes an act to be done, which is directly performed by him or another, would be an offense against the United States, is punishable as a principal."

In broad, general terms, this statute has the effect of making responsible one who directs an illegal act to be done or causes it to be done, just as if he had actually performed the act himself.

Now, to constitute the offense of knowingly depositing or causing to be deposited in the mail, it is necessary that the offending or accused party should be conscious of the physical act of depositing or causing to be deposited the material in the mail, and he should be aware that such paraphernalia is related to a bookmaking enterprise.

The word, "concerning," in the statute means pertaining to or having relation to.

2486 In connection with this count, the envelope addressed to Mr. Diulus has been admitted into evidence and I call your attention to the testimony of Mrs. Haney and what she said with respect to her part in mailing the envelopes and at whose direction it was done.

If you find beyond a reasonable doubt that Mr. Ianelli directed Mrs. Haney to mail out these rules, that he knew they were to be deposited in the mail, that this printing was, in fact, used or to be used or designed for use in bookmaking, then you would find him guilty of this count. If, on the other hand, the Government did not prove each element enumerated, that is, knowledge, direction and purpose of the use, then you would find him not guilty on this count.

Note, Mr. Diulus is not charged under this count for the mere receipt of the material, because that would not be illegal.

The second count lists all of the defendants. It is claimed that on and after October 16, 1970, up to and including March 25, 1971, that all of the defendants did knowingly and willfully conduct, finance, manage, supervise, direct and own an illegal gambling business, such business having a gross revenue of $2,000 or more on one or more single days, involving five or more persons in its conduct, financing, management, supervision, direction and ownership, and being in substantially continuous operation for a period in excess of thirty days; furthermore, that the

2487 business was in violation of the laws of Pennsylvania.

I had earlier read to you one of the Pennsylvania laws pertaining to gambling in connection with the sixth count of the indictment. You will recall that that one referred to those who engage in bookmaking or occupy any place with books for the purpose of recording or registering

bets, et cetera. I don't think it is necessary that I repeat it at this time.

The other Pennsylvania statute is Section 4601, which provides, in part, that whoever either publicly or privately sets up, opens, makes or causes any lottery, or is in any way concerned in the managing, conducting or carrying on the same, is guilty of an offense against the Commonwealth of Pennsylvania.

The word, "lottery," as used in this section, means any scheme whereby one on paying money to another becomes entitled to something of value or nothing, as determined by chance.

The main statute with which we are concerned, however, under the second count, is Section 1955 of the United States Code. Many of its provisions are incorporated in the indictment count itself, but it is necessary that we review this particular statute with some care.

The law reads:

"Whoever conducts, finances, manages supervises,
2488 directs or owns all or part of an illegal gambling business shall be guilty of an offense."

This is what the statute says is the offense, namely, conducting, and all of those other qualifications that I mentioned, managing, supervising, financing, directing, and so forth.

The special verdict slip which has been sent out to you gives a short summary of the first sentence after the listing of the count as to what that particular count applies to, and in Count 2, we have set out these particular words, and I want you to understand that any time hereafter, when I refer to Section 1955, and if I say, "conduct," et cetera, I am referring to conduct, finance, manage, supervise, direct and own, those categories. Those categories are set

out in the special verdict slip, too, so it is not necessary to keep repeating them all over and over again.

Now, Congress did not wish to regulate all gambling. It felt that much of this should be left to the States. It, accordingly, defined the illegal gambling business it sought to regulate as requiring the following conditions:

One, a violation of State law.

Two, that it involves five or more persons to conduct, finance, et cetera, and

Three, that it has been or remains in substantially continuous operation for a period in excess of thirty
2489 days or has a gross revenue of $2,000 in any single day.

Congress also defined gambling to include bookmaking and conducting numbers games.

Each and every one of these elements must be proved by the Government beyond a reasonable doubt as to each defendant. That is, again, you must consider each defendant's case individually.

It is not necessary that the Government charge five or more persons with the commission of this crime, but, rather, that the Government prove that any of the defendants were involved in the category described of the statute in the business with four or more other persons, some of whom may be defendants and others who may not be charged as defendants, but who also acted in the capacity that we have referred to so many times as conduct, finance, manage, supervise, direct or own.

It is not necessary for the Government to prove that each defendant was active in the illegal gambling business in these capacities for a period in excess of thirty days, but, rather, that the business itself was in operation for this period of time, or that the business itself grossed more than $2,000 in any one day.

It is necessary that each defendant who is charged, knowingly, willfully and intentionally performed the acts or caused to be performed, the acts to conduct, manage,
2490 finance, supervise, direct or own the gambling business. But it is not necessary for the Government to prove that each defendant who was active in the conduct, et cetera, of the business, knew or had reason to know of the identities of the other or all the other defendants or members of the business, or that each defendant knew or had reason to know, the identities of the five or more persons who were involved in this statutory categorization we have talked about, in the business.

Again, what the Government must prove is that there were five or more persons involved in the conduct of the business and in the categories I have mentioned, and the defendant took some part in its activity in one of those classifications set out in the statute.

Now, the Government has charged that Robert Ianelli conducted, managed, financed, supervised and directed the operation of the business. The prosecution contends that Dolores Ianelli conducted and managed in the business.

Maurice Orlanski and Philip Scolieri are said to have conducted or aided and abetted the operation of the business. Of course, if there is no evidence to establish the existence of such a business, then there could not be any crime of aiding and abetting. You can only aid and abet a crime which has been proved.

All of the other defendants are charged with conducting the business.

2491 The words, "managed, supervised and directed," should be given their ordinary meanings. That is, the words mean some activity in the nature of control, giving orders to others, watching the activities of those who might be considered in a subordinate position and, gen-

erally, assuming responsibility for the continued operation of the enterprise.

Aided and abetted, I have previously defined for you and read the statute to you.

The word, "conduct," as used in this statute, has a broader meaning than manage or direct. For example, you might say that an orchestra leader conducts the musicians; that is, gives orders and directions to them. But in the sense of this statute and the purpose to be accomplished, the word, "conduct," may be compared to "carrying on," an enterprise.

For example, we often say that two or three policemen conduct an investigation, meaning that they carried it on and were active in the progress of the work.

On the other hand, a person who walks into a bookmaking establishment or calls on the telephone for himself and wants to place a bet for himself would not be "conducting" the business, nor would he be within the class of those covered by this particular Act of Congress.

An accommodation bettor, who simply placed a bet for himself and another as a favor without anything in
2492 return, would not be in violation of the Act. In other words, the term, "conducts," is interpreted to apply to both the high-level bosses and street-level employees. It does not mean the mere player in an illegal game of chance, nor the person who participates in an illegal gambling activity merely by placing a bet.

In considering the evidence as it applies to all defendants, first of all, and in considering the number of people whom you may find to be involved in an illegal gambling business, if you find that to exist, I call your attention again to the testimony of Mr. McCullough who said he was paid so much per day for answering the telephones; that he

worked for Mr. Ianelli; that when Mr. Ianelli was out of town, Mr. Arnold Thomas helped out.

There is the testimony of Mrs. Haney, who said that she was paid by the Ianellis; that she sometimes called Mr. Ianelli and sometimes Mrs. Ianelli; that Mrs. Haney collected personally from a woman named "Edith," who received a percentage; that a person named "Louise," got a percentage of about thirty per cent; that there were a number of names of people on her list of names and phones numbers which had been offered into evidence in this case.

Again, those names are on one of the exhibits that will be sent out with you.

You will recall the length of time that Mr. McCul-
2493 lough and Mrs. Haney said they continued to be paid by Mr. Ianelli for working for him. With respect to the question of whether there was a business of five or more people, you may consider the testimony of Mr. McCullough and Mrs. Haney. Consider the persons about whom they testified, what these persons did. You should determine from your examination of the testimony of Mr. McCullough and Mrs. Haney, and the exhibits which have been admitted into evidence, if the Government has established the existence of a gambling business of five or more people continuing for a period of thirty days or more during the period charged in the indictment.

As I said before, in considering whether the requisite number of five has been met, you would not consider a person who was simply placing a bet for himself, but would consider only the people in the categories we have mentioned, that is, who conducted, managed, financed, supervised, directed or owned all or part of the business.

The statute provides that the gambling business must be in operation for thirty days or more or have a gross revenue of $2,000 or more per day. The Government has the option of proving either of these conditions. They need not prove both. Either one will suffice. The gross revenue,

which the statute talks about, you would find roughly equivalent to the amount of money that came in every day that was bet by the customers of the business, if you
2494 find the business existed.

Additionally, when considering the case of each defendant, you should consider whether admissions made during his telephone conversations by that particular defendant also implicated him as one of those who was active in the business, as the statute requires, and who, therefore, should be added to the number of other people to get to the total figure.

For sake of example only, and not to indicate in any fashion the way I think you should decide, suppose that you would determine through the testimony of Mr. McCullough and Mrs. Haney and other factors, that there were four people who acted in one of the stated capacities in the business. Then, when you come to the case of, let's say, Defendant Jones, you conclude that the telephone conversations of Mr. Jones convince you that he is also in one of those stated capacities in the business. You may, then, in considering Mr. Jones' case, add his name to the other four to come up with the five.

In considering Mr. Jones' case, however, you should not consider the conversations between Mr. Schultz and Mr. Ianelli, for example, because Mr. Jones was not a party to that conversation and Mr. Schultz's conversation could not affect Mr. Jones' case. This gets back to what I mentioned to you during the trial of the hearsay problem and the right of a defendant to confront a witness against him on the stand.

2495 Now, when you come to consider the cases of Mr. Ianelli and Mrs. Ianelli, you have a somewhat different situation, obviously, because it was their phone facility which was tapped and therefore they are alleged to have engaged in practically all of the conversations with the other defendants. Again, in Mr. Ianelli's case, when you

consider his guilt or innocence, his conversations could be used as admissions against himself with respect to whether the people he talked to were in one of the stated capacities in a business with Mr. Ianelli, as we have defined it.

Now, some issue has been raised about a lay-off bettor. If you find that a lay-off bettor was a part of the gambling business plan, and that lay-off betting was not simply because of an individual's desire to bet, rather, was necessary for the operation of a gambling business, that it was done so knowingly to further the gambling business, then you may consider the lay-off bettor as one of those in the stated capacity, that is, conducted, managed, directed, financed and so forth, and he would be subject to the same test as those who are alleged to be part of the gambling business in the capacities which I have mentioned to you.

I keep referring to these capacities mentioned by the statute so it will be very clear that in order to violate Section 1955, the defendants must fall within one of those categories that the statute sets out. If he happens to be
2496 a janitor for a gambling business and that is all he does, he is not in the category of conducting, owning, financing, managing, directing, and so forth. Any defendant to be found guilty of violating this particular Act, must be in one of those categories.

In considering the type of activity or enterprise involved, too, you are free to consider the fact that in addition to other matters, the telephone calls were made from the Ianelli phone to certain other defendants, these numbers having been furnished to you via the Northeast Recorders and pen register recordings which the FBI agents told us about.

In other words, while you may not consider, perhaps, what Mr. Schultz said as evidence against Mr. Jones, the fact that a phone conversation was had, or that the phone

call was made from Ianelli phone to Schultz, may be of some importance in the case in analyzing what happened in Mr. Jones' particular situation. You can see a difference between the fact that there is evidence a phone call was made to a certain point and considering what words were used by the person to whom that call was made. They are in separate categories.

Now, the "business," may be defined as some type of organization whose primary purpose was profit, which was run on some type of continuing and systematic basis to distinguish it, for example, from a single or sporadic transaction. However, Congress, by use of the word, did
2497 not necessarily imply that we must have the same type of formal structure as is common in ordinary business life, that is, a partnership, a sole proprietorship, or a corporation. Business in the sense of this statute, means any kind of organization which could function to furnish a profit in a gambling enterprise in a continuing series of transactions over a period of time.

I don't intend to review the calls or the evidence as to each defendant. I leave that to your recollection. In considering each defendant, you may take into account such things as the role of his activity, the volume of his transactions, the scope and size of his activity and whether they were conducted for a profit. The fact that individuals enter into similar enterprises, but do not work together under one roof, is not determinative of whether they are in business together. They may conduct their activities at great distances from each other and still be part of an overall organization, that being a business directed toward some purpose or end.

Individuals in the same business may, to a certain extent, compete for the profits and spoils of that business. As I have already told you, a business is directed towards a purpose or an end. Consider whether the defendants had a common purpose in their dealing with each other and con-

sider whether such purpose was substantial and necessary to each defendant.

As I mentioned earlier, you should consider the
2498 evidence which is applicable to all of the parties and then begin to narrow the case down to each one of the named defendants. Taking the evidence common to all, plus the admissions which may or may not have been made in conversations by that defendant with the Ianellis, are you satisfied beyond a reasonable doubt that a particular defendant engaged in an illegal gambling business as has been defined to you, that he knowingly and willfully engaged in the gambling business? If so, you would find that defendant guilty of that count. If the Government did not meet all the requirements by evidence beyond a reasonable doubt, then you would find as to that defendant, he was not guilty.

We have been going for some time. I think we will take a five-minute break before we conclude the instructions.

(Brief recess.)

The Court: In some ways, this is like a sermon in church. You sit so long and listen, and after awhile, you are so numb, you don't hear anything.

The first count is also brought against all of the defendants and it charges that there was a conspiracy existing between all of them and certain other persons who are not named as defendants, including McCullough and Haney, D'Amiano, Arnold Thomas, and others. These latter-named people are not defendants in this case.

The conspiracy, therefore alleged, is that all of the
2499 parties that I have talked about previously, combined, conspired, confederated, and agreed to conduct, finance, manage, supervise, direct and own an illegal gambling business in violation of Section 1955, the same statute which we just finished discussing.

In other words, the conspiracy count alleging that they planned to violate the same statute which is the subject

matter of the second count. When you talk about conspiracy, you are talking about an agreement.

The Government claims that in addition to the conducting, financing, managing, et cetera, the conspirators facilitated the conduct, financing, management, et cetera, of an unlawful activity. That is, an activity in violation of the gambling laws of Pennsylvania and the United States which I referred to previously, and that thereafter, the conspirators did perform and attempt to perform acts facilitating the conduct, financing, management, supervision and ownership of the illegal gambling business.

And then the indictment goes on to recite the five persons, the gross revenue and the period in excess of thirty days, as we discussed previously.

The Government alleges in the indictment that it was part of the conspiracy that Robert Ianelli hired employees, William Tice McCullough and Joanne Haney, to work in the business on a salary basis, and that others in the
2500 conspiracy worked on a commission basis. Again, as part of the conspiracy, it is claimed that Robert Ianelli had Joanne Haney mail the weekly football schedules and news to persons involved for the purpose of facilitating the dissemination of line and point spread information necessary to the operation of an illegal gambling business.

Even though the sending of weekly football schedules and news in and of itself is not an illegal activity, it may still form part of the conspiracy, because a conspiracy may be accompanied by acts which are innocent in themselves and legal in themselves, but which are used to bring about an illegal result.

For example, it would be perfectly legal and innocent to mail a Bible to a number of people. However, if this was part of a plan to further a gambling business, then that act could be part of the conspiracy.

The Government claims that Robert Ianelli and McCullough disseminated line and point spread information and accepted bets and wagers on sporting events from conspirators and others.

The prosecution also says that several of the conspirators would meet periodically among themselves and with others to exchange moneys due and owing as part of the gambling business.

The Government charges that Dolores Ianelli
2501 supervised, conducted, managed and directed that part of the illegal gambling business dealing with numbers bets and that she would and did receive over the telephone from certain of the conspirators the gross, net and balance figures of other conspirators, and that she also accepted numbers bets over the telephone.

As overt acts, the Government claims that in pursuance and in order to further the objects and designs of the conspiracy, the conspirators communicated by a number of telephone calls. I don't think it is necessary that I repeat these particular calls, since they are many and you have heard them.

First of all, let's start off with what the law says a conspiracy is. Section 371 of Title 18, United States Code, provides in part:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to affect the object of the conspiracy, each is guilty of an offense against the United States."

The essence of conspiracy is an agreement by two or more persons to combine efforts for an illegal purpose and the performance of at least one of the over acts charged by one of the defendants or co-conspirators in furtherance of the agreement. In other words, for a conspiracy, you must have an agreement and you must have some act done in furtherance of the conspiracy.

2502 The mere agreement by two people without anything more is not a crime. In addition to agreeing, they must do something. It is not necessary, however, that two persons should meet together and enter into a formal or explicit agreement, either orally or in writing, stating the formation of the conspiracy or the details or means by which the unlawful scheme is to be carried out. You may consider the acts and conduct of the individuals to determine if there was an unlawful agreement. It is generally a matter of inference.

Let me point out, however, that neither association with conspirators nor mere knowledge of illegal activity constitutes proof of participation in a conspiracy, nor is mere aid or assistance given by a defendant to another to violate the law sufficient to justify conviction for conspiracy, unless such aid is given for the purpose of carrying out the unlawful design of a conspiracy agreed to by him and the others.

Four essential elements are required to be proved in order to establish the offense of conspiracy. First, that the conspiracy described in the indictment, that is, to violate Section 1955, was willfully formed and was existing at or about the period extending from the 16th day of October, to March 25, 1971. It need not have been in existence during the whole time. Second, that the particular defendant, whom you are considering at the time, willfully became a member of the conspiracy. Third, that one of the
2503 conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged; and fourth, that the overt act was knowingly done in furtherance of some object or purpose of the conspiracy.

It is not necessary that each person alleged to be a member of the conspiracy do an overt act. An overt act need be done by only one of the conspirators in furtherance of some object or purpose of the conspiracy in order to make the offense complete. But if an act is done by one who is

not a member of a conspiracy, the commission of the overt act would not make that person guilty of conspiracy.

One may become a member of a conspiracy without full knowledge of all the details. On the other hand, a person could have no knowledge of a conspiracy but happen to act in a way which furthers some object or purpose of the conspiracy, but he would not thereby become a conspirator.

Before you may find that a defendant or any other person has become a member of a conspiracy, the evidence must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or other person claimed to have been a member willfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy. Mere knowledge by the other defendants that the law was being violated, without their joining in an agreement to violate the law, is not sufficient to spell out the crime of conspiracy.

2504 To act or participate willfully means to act or participate voluntarily and intentionally and with specific intent to do something which the law forbids, or with specific intent to fail to do something the law requires to be done. That is to say, to act or participate with the bad purpose either to disobey or to disregard the law.

One who willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy. Or to paraphrase it, a late joiner is just as guilty as the charter member.

I have use the words, "overt act," a number of times. It is defined as follows: It is an act knowingly committed by one of the conspirators in an effort to affect or to accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or

driving an automobile or using a telephone. It must, however, be an act which follows and intends to look toward accomplishment of the plan or scheme and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

A person cannot conspire with himself. There
2505 must always be at least two persons.

May I call your attention to the fact that while Section 1955, the illegal gambling law, requires that the gambling consist of five or more people, the conspiracy count requires the participation of only two people. Just to illustrate the point, and again, without attempting in any way to give any impression to you, which I am not, I am simply trying to explain the concept here. It is theoretically possible that two people could conspire to form a business of five or more. It would be theoretically possible, too, that if the business were underway and only reached a total of four, that there would be no violation of Section 1955, but there still could be a conspiracy charge on the part of those who planned the agreement to ultimately make a business of five, even though they never actually reached five.

So, there would be conspiracy, even though the law which they planned to violate had never really been violated.

It is not necessary that the participation of an accused in a conspiracy be shown by direct evidence. The connection may be shown by such facts and circumstances in evidence as legitimately can sustain that inference. However, the mere fact that nine persons are on trial together cannot be considered in any way as indicating that they participated in a common plan, agreement or conspiracy to violate the law. There can be no conspiracy without a corrupt agreement or understanding.

2506 Well, any statement of any conspirator which is not in furtherance of the conspiracy or which was made

before the conspiracy came into existence or which was made after the conspiracy terminated, may be considered as evidence only against the persons who made the statement.

If you once determine, however, after reviewing the evidence that conspiracy exists, and that the defendants or the defendant whom you happen to be considering at the time were members of it, then as to those who you find were members of the conspiracy, you may consider the declarations of others who were also members as evidence to aid you in determining if there is guilt proved beyond a reasonable doubt.

Remember, for this situation to apply, you must determine one, a conspiracy existed; two, that the particular defendant whose guilt you are considering was a member, and then you may consider the hearsay statements made during the course of the conspiracy in furtherance of the conspiracy by another member of the conspiracy.

Now, this is why I start off with the other counts and work toward the first count. That evidence would not be admissible in proving guilt under the second count, but it could be admissible under the circumstances I just enumerated with you in proving the guilt of conspiracy.

To be a member of a conspiracy, one need not know
2507 all the details of it, nor need one know all the members of the conspiracy. Mere similarity of conduct among various persons, the fact that they may be associated or friendly or know each other, does not necessarily establish the existence of a conspiracy.

What the evidence must show beyond a reasonable doubt to establish a conspiracy, is that the members in some way or another, or in some manner or through some contrivance, postively or tacitly, that is perhaps without even saying a word or even mentioning it between them, came to a mutual understanding to try to accomplish the mutual plan.

The intent to form the conspiracy must be over and above that to accomplish the underlying or substantive offense of violating Section 1955.

Now, there is a further question that the conspiracy must be a single plan. If there is a series of separate, unrelated conspiracies, then the Government would not have proved its case, because it charges one conspiracy. And, therefore, the question would be, does this agreement as part of the conspiracy, have a common end or single unified purpose. It will be up to you to determine if you find the evidence sufficient to establish a single conspiracy, that there was overlapping of members and activities and everything was directed toward a single, common goal.

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SUPPLEMENTAL CHARGE OF THE DISTRICT COURT

2516 For violation of Section 1955, three elements are required. First, violation of State law; second, involving five or more persons who conduct, finance, manage, supervise or own all or part of the business; and the third category is in operation or has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

Now, that third category offers an option. Either one is sufficient to fill the third category. That is, the
2517 Government may either prove the thirty days continuous operation, or gross revenue of $2,000 in a day to satisfy that third category.

I will run them over again. The three categories, violation of State law, five or more people whose capacities we have talked about so many times and, third, either thirty days or $2,000.

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